

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of decision: 6th September 1996

SPECIAL CIVIL APPLICATION NO.10556 OF 1995

WITH

SPECIAL CIVIL APPLICATIONS NO.3266 TO 3339 OF 1996

WITH

SPECIAL CIVIL APPLICATION NO. 3719 OF 1996

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE B.C. PATEL

AND

THE HONOURABLE MR. JUSTICE R.R. JAIN

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involved a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SPL. C.A. NO. 10556/95 WITH  
SPL. C.As. NO. 3266/96 TO 3339/96.  
Mr. G.N. Desai, learned Senior Counsel with  
Mr. P.G. Desai, learned advocate for petitioners.  
  
SPL. C.A. NO. 3719/96.

Mr. B.P. Munshi, learned advocate for petitioner.

FOR RESPONDENTS IN ALL ABOVE CASES:

Mr. S.N. Shelat, learned Additional Advocate General with Mr. A.J. Desai, learned Assistant Government Pleader for Respondents No. 1 to 3.

Mr. Anil Diwan, learned Senior Counsel with Mr. J.R. Nanavati, Mr. Mahesh Agrawal & Mr. Avinash Thacker, learned advocates for respondent No.4

CORAM: B.C. PATEL & R.R. JAIN, JJ.

DATE: 6TH SEPTEMBER 1996

C.A.V. JUDGMENT:

Seventy Nine petitioners have preferred these petitions, against the (1) State of Gujarat, (2). Land Acquisition Officer & Dy. Collector, Jamnagar, (3) The Collector, Jamnagar and (4) Essar Oils Limited (hereinafter referred to as the respondent Company). This is a group matter and the questions involved in all these petitions are similar. We are, therefore, disposing of all these petitions by this common judgment. Spl. C.A. No. 10556/95 is the substantive petition and the documents annexed to this petition are discussed in this judgement.

2. The petitioners have interalia prayed to issue a writ of mandamus directing the respondents to treat the notifications under sections 4 and 6 of the Land Acquisition Act (hereinafter referred to as the Act) issued by the State Government at Annexures 'B' and 'E' respectively and the notice issued under section 9 of the Act as cancelled and to declare that notifications under sections 4 and 6 are void, illegal and are inoperative. It is also prayed for directing the respondents to treat the purported agreement under section 11(2) of the Act, a specimen of which is produced at Annexure 'D' to the petition as void and the awards made by the Land Acquisition Officer to be treated as cancelled.

3. Notifications under sections 4 and 6 came to be issued for acquiring lands within the limits of village Zankhar, Bharana, Timbdi, Sodha-Targhari,

Kathi-Devda and Kajurda.

4. Before filing these petitions, petitioners and others formed an association of persons i.e. of the Agriculturists whose lands are acquired and through the President of that Association, Special Civil Application No. 2937 of 1995 was filed in this Court, challenging the notifications issued under sections 4 and 6 of the Act as well as notice issued under section 9 of the Act inter alia praying that the same may be treated as cancelled and the notifications be declared as void, illegal and having no effect. That petition was presented through learned advocate Mr. P.G. Desai on 5th April 1995, who has also filed these petitions. Along with the petition, at annexure 'A', a list of 257 names of the affected farmers was tendered. 86 farmers of Kathi Devada, 51 of Sodha Targhari, 12 of Timbdi, 50 of Kajurda, 16 of Zankhar, and 42 of Bharana were shown as farmers to be affected on account of acquisition proceedings. On behalf of these persons, the abovesaid Spl. C.A. No. 2937/95 was preferred in this Court.

5. Some important and relevant facts giving rise to this litigation are summarised as under :-

5.1 It appears that the respondent Company made an application to the Government of India for setting up a Refinery for petroleum products, informing the Government that the project would be set up at the West Coast of India. The Government of India granted approval to the respondent Company for foreign collaboration proposal on or about 6.1.1993. Collector, for the purpose of joint measurement, called upon the District Land Records Inspector on or about 1.2.1993 and also called upon the respondent Company to deposit a sum of Rs. 3 Crores. It appears that nine leaders of various villages forwarded their objections on or about 15.2.1993. It also appears that an agreement was executed by the Company with the Government on or about 8.9.1994 which was gazetted on 16.12.1994 and thereafter two notifications were issued under section 4 of the Act. It appears that the respondent Company's representative as well as the Collector and the Deputy Collector held meetings and tried to arrive at a settlement with the land holders. However, it ended in no result. This happened between 7.12.1994 and 6.1.1995. It appears that between 11.12.1994 and 20.12.1994,

objections were lodged by some of the petitioners/claimants. Some of the petitioners/claimants were represented by an advocate, Mr. A.C. Dave. It appears that in response to a notice under section 5.A of the Act, some of the petitioners/claimants personally appeared for hearing of objections and made their submissions. Advocate Mr. A.C. Dave also appeared on behalf of some of the petitioners/claimants and made his submissions on behalf of some of the petitioners/claimants. This happened on or about 12.1.1995. Thereafter, two notifications under section 6 were issued on or about 30.1.1995. Meanwhile, the Company continued its efforts for settlement and ultimately, it appears that the Company and land holders of village Zankhar arrived at a settlement wherein the claimants agreed to take Rs.17,500/- per vigha for nonirrigated lands and Rs.35,000/- per vigha for irrigated land. This happened somewhere on 31.3.1995. With regard to other villages, between 31.3.1995 and 26.6.1995, claimants, representatives of the Company and Officers of the Collectorate were negotiating for settlement and ultimately it was agreed that compensation inclusive of additional amount, incentive and solatium etc. be paid at Rs.17,500/- for non-irrigated land and Rs.35,000/for irrigated land and it appears that after signing the agreement and 'Kabja pavti', and after receiving part payment, landholders i.e. claimants of these villages, handed over possession of their lands, the details are as under:-

Sl.No. Name of village Date

1. Zankar 31.03.95
2. Bharana 24.04.95
3. Kajurda 06.05.95
4. Kathi Devada 12.05.95
5. Timbdi 24.05.95
6. Sodha Targhari 26.06.95

5.2 It appears that on 16th June 1995, Spl. C.A. No. 2798/95 came to be withdrawn. Thus, it is clear that (except Agriculturists of Sodha Targhari, who executed agreements soon after withdrawal of petition) all entered into an agreement and thereafter petition has been withdrawn. The Division Bench of this Court (B.N. Kirpal, C.J. and H.L. Gokhale, J.) passed the following order.

"Civil Application No. 975 of 1995

has been filed for withdrawal of Special Civil Application No. 2937 of 1995. Counsel for respondent No. 4 readily and eagerly agreed to this application being allowed. Before allowing the application, we cannot but observe that it is indeed a mystery as to what has persuaded the petitioner, who was vehemently challenging the acquisition of their land, in now wanting, equally vehemently, to withdraw the petition. Application is allowed.

In view of the above order in Civil

Application No. 975 of 1995, Special Civil Application No. 2937 of 1995 is dismissed as withdrawn. Notice is discharged. (emphasis supplied by us).

5.3 Thus, the tenor of the order and intention of parties suggests that the petition was withdrawn unconditionally without reserving liberty to file a fresh petition on the same subject matter. Similarly, the Court has not granted any liberty to file a petition afresh in the subject matter.

6. In Spl. C.A. No. 2937/95 there is a specific reference to Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as the Rules) and alleged failure on the part of the Collector to make inquiries in the manner as contemplated under the said Rules. A specific ground was also taken that inquiry as contemplated under section 40 has not been held in accordance with law; that section 4 notification has been issued without holding inquiry; that the procedure under section 5A has not been followed; and, that agreement under section 41 has not been executed in accordance with law. In short, contention was raised in the petition that without following the procedure laid down in part VII of the Act and the Rules, the lands cannot be acquired as the lands are to be acquired for a Company. However, by withdrawing the petition, the claim based on the said grounds thus stands abandoned.

7. Mr. G.N. Desai, learned counsel submitted that the purpose of acquisition is not a public purpose and the lands are sought to be acquired for

a Company. Notification issued under Section 6 also makes it clear that it was to be acquired at the Company's expenses, and not at public expenses. He drew our attention to the purpose, which is for a tank farm and oil refinery. Relying on part VII of the Act, he submitted that unless the previous consent of the appropriate government is obtained in accordance with provision of law and the procedure before the consent is followed, the proceedings initiated are not in accordance with law. He contended that there is no inquiry, agreement as per Sec. 41 and publication of the agreement as required under section 42 of the Act. He drew our attention to the reported decisions of the Apex Court in the case of STATE OF GUJARAT VS. AMBALAL reported in AIR 1976 SC 2002 and in the case of A. HUSSAIN VS. STATE OF GUJARAT reported in AIR 1968 SC 342. He has also relied upon the decision of this Court in the case of ZAVERCHAND POPATLAL SUMERIA VS. STATE reported in 1995 (2) GLR 1733. It was submitted that as procedure contemplated in part VII of the Act with the Rules is not followed, proceedings are required to be quashed. He submitted that Agriculturists are poor and illiterate and their source of livelihood is only agricultural operation and agricultural land should not be acquired as far as possible. He also submitted that there cannot be any sympathy for the Company.

7.1 Learned advocate Mr. Desai submitted that even if the petitioners filed a petition by forming an Association through its President, the present proceedings should not be rejected on the ground that the earlier petition filed, was withdrawn. He has relied on the judgment of the Apex Court in the case of ASSOCIATED HOTELS OF INDIA. VS. RANJIT SINGH reported in AIR 1968 SC 933 and submitted that in the instant case, it cannot be said that the petitioners have waived their rights. In the case of Associated Hotels (supra) it was argued that the respondent waived the requirement of consent to the sub-letting. Any sub-letting in breach of the provisions of clause (b) of the proviso to Section 13 (1) of the Delhi and Ajmer Rent Control Act, 1952 is an offence punishable under Section 44. It was further submitted that even assuming that the landlord can waive requirement as to consent, it is not shown that the respondent waived it. In this facts situation, the Apex Court held that "A waiver is an intentional

relinquishment of a known right. There can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of facts enabling him to take effectual action for enforcement of such rights." In the instant case, from the fact that (i). an Association was formed for which amount was collected and on whose behalf the earlier petition was filed including the petitioners, (ii) that an advocate was engaged, (iii) that even before filing the petition some of the petitioners executed agreement and accepted the amount, (iv) that some of the petitioners received the amount after filing the petition, (v). that all entered into an agreement for the award and (vi) that in the petition there is a specific reference about non-observance of Chapter VII of the Act and the Rules, it is crystal clear, and we have absolutely no doubt in our minds, that the petition was filed with a view to claim rights available under law and by withdrawal of such petition, such rights stand abandoned and shall be deemed to have waived their claim. Consequently, their right to file another writ petition under Article 226 on almost identical grounds is barred and gets extinguished. However, if any other remedy is available under law, can be availed of. The petitioners were represented by an advocate and thus were guided by a competent person. We have taken a note of the fact that the petitioners have accepted the amount of compensation. We have also to look at the conduct of the parties. After executing an agreement if the amount is accepted and the possession is handed over, the only inference that can be drawn is that they acted at the relevant time under a binding agreement and because of some event which took place thereafter, i.e. after withdrawal of the earlier petition, the present petition is filed.

7.2 Mr. Desai also submitted that acquiescence does not confer jurisdiction for which Mr. Desai relied upon the judgment of the Apex Court in the case of U.P. RAJKIYA NIRMAN NIGAM LTD. VS. INDURE PVT. LTD. reported in JT 1996 (2) SCC 322. In that case, application was submitted under section 33 of the Arbitration Act for declaration that there exists no agreement between the appellant and the first respondent on the basis of which a dispute for a claim of money could be referred for arbitration as the agreement set up by the respondent was non est and alternatively the

dispute was not arbitrable under the agreement. In that case, tenders were not jointly signed by the appellant and the respondent but were unilaterally submitted to the Board by the appellant and were lateron withdrawn. There did not exist any concluded contract between the Board and the appellant for the performance of the work as per the terms and conditions of the tender floated by the Board. Under section 32 of the Contract Act, it was a contingent contract until it was accepted by the Board. In this background, a question arose as to whether there is an arbitration agreement between the parties? A submission was made that after the offer, there was a counter offer by the respondent and that amounts to acceptance by the conduct of the appellant. The Apex Court held that it does not amount to acceptance of counter proposal. In paragraph 16, the Apex Court held that:

"Since the tenders -the source of the contract between the parties- had not transformed into a contract, even if the proposal and counter-proposal are assumed to be constituting an agreement, it is a contingent contract and by operation of Section 32 of the Contract Act, the counter-proposal of the respondent cannot be enforced since the event of entering into the contract with the Board had not taken place."

In paragraph 19 of the said judgment, the apex Court held that in view of the fact that Section 2 (a) of the Arbitration Act envisages a written agreement for arbitration and that written agreement to submit the existing or future disputes to arbitration is a pre-condition and further in view of the fact that the original contract itself was not a concluded contract, there existed no arbitration agreement for reference to the arbitrators. The Court further held that the question of appointing an Arbitrator would not arise. However, without prejudice to the right to claim that no valid agreement much less arbitration agreement existed, an arbitrator was nominated to arbitrate the question. Since the Arbitrator nominated had expired, the appellant was called upon to nominate another Arbitrator and it is at that stage that the appellant filed the petition under Section 33 of the Act. In this circumstances, the Apex Court held that the



Arbitrator cannot proceed further to arbitrate the dispute, if any.

8. In the instant case, there is a concluded contract. Acceptance of part consideration and parting with possession amounts to implementation and, therefore, parties are estopped from retracting. Parties have to abide by the same. Therefore, we find no merit in the contention raised by Mr. Desai. If there was no agreement in the instant case, Mr. Desai would be justified.

9. On behalf of the respondents, it was submitted that as earlier petition was withdrawn wherein all these contentions were raised, the petitioners cannot now be permitted to argue before this Court the very contentions. It was submitted that after filing of the aforesaid petition, petitioners have entered into an agreement with the Company and some petitioners entered into an agreement even after withdrawal. When the aforesaid petition was filed by them, they were aware about all these provisions and knowing full well that the procedure is not followed, after raising all the contentions, if they have withdrawn the petition, they cannot now be permitted to make the same grievances before this Court after accepting amount as agreed and parting with the possession of the land.

10. At one stage it was argued on behalf of the petitioners that an unregistered association is not a legal entity in the eyes of law, and, therefore, any act done by the so-called President is not binding to the persons named therein. In other words, it is sought to be argued that the withdrawal of previous petition by Kesharsing Kanjibhai Jadeja as President of unregistered Association does not prevent the petitioners from bringing fresh petition. Ofcourse, after lapse of some time, Mr. Desai has changed his stand and made an alternative submission that even assuming for the sake of arguments that the petition was filed on behalf of all then also, the present proceedings are not bad under the changed circumstances.

11. To meet with this argument, Mr. Diwan, learned counsel for respondent No.4 has invited our attention to paragraphs 3 and 4 of the present

petition which read as under :-

" ... The petitioners say that the petitioners were represented by one Shri Keshrising Kanjibhai Jadeja and an association was formed and a petition being Special Civil Application No. 2937 of 1995 was filed by the said Shri Keshrising Kanjibhai Jadeja on behalf of the Association challenging the acquisition proceedings in favour of respondent No. 4 Company.

4. Petitioners say that relying on the assurances given by said Shri Keshrising the petitioners contributed for filing the abovesaid petition No. 2937 of 1995 filed by said Shri Keshrising. The petitioners say that thereafter when the petition was pending it was represented by said Shri Keshrising that the 4th respondent Company is ready and willing to give substantial amount of market value of the land as well as solatium and interest and also ready to give other benefits as explained by said Shri Keshrising and thereupon said Keshrising withdrew the said petition. Petitioners say that it seems that the said petition was withdrawn at the behest of the 4th respondent Company."

This clearly suggests that the earlier petition was filed by the President representing the interest of all the interested persons. The subsequent development suggests that as the parties had entered into a valid and legal agreement agreeing rate of compensation and other terms and conditions for handing over possession, etc. it was thought fit to withdraw the same. If the withdrawal is under such circumstances then we have no hesitation in holding that the petitioners abandoned their all contentions, having been satisfied with the subsequent agreement. The part payments received under the agreements have already been appropriated by the petitioners. Apart from these facts, institution of earlier petition and withdrawal thereof was done by the same advocate, who has filed the present petition. Since both the acts, i.e. institution and withdrawal are by same advocate in consultation with same person, the only inference which can be drawn is that the withdrawal was only after having found that the grievance made

and contentions raised were remedied and such development led them to withdraw the same, and, therefore, the petitioners shall be estopped from bringing fresh petition on the same ground. We questioned the learned counsel that did the learned Advocate before withdrawing the petition not inquire about the interest of other claimants?

12. In the light of the aforesaid facts and circumstances, we find no substance in the submissions of Mr. Desai that the earlier petition was withdrawn at the behest of the Company under misrepresentation of facts. It would be pertinent to note that having confronted with the aforesaid facts, Mr. Desai, learned Counsel for the petitioners, rightly did not pursue this point further and agreed to the legal position that the petition was withdrawn by all.

13. Thus, it is very clear that on behalf of these very petitioners, earlier petition was preferred and the same has been withdrawn. Learned counsel for the respondents referred to several decision in support of his submission that once a petition is withdrawn, second petition is not maintainable. However, all decisions being on the same line, we are referring to only one decision in the case of SARGUJA TRANSPORT SERVICE vs. S.T.A. TRIBUNAL, GWALIOR reported in AIR 1987 SC 88. It is submitted that when a petition is withdrawn simpliciter, without reserving any liberty to file a fresh petition on the same cause of action, the fresh petition filed by these petitioners should not be entertained. Before the Apex Court, it was a case of simple withdrawal of a petition and no liberty was reserved to the petitioners to file a fresh petition. The Apex Court held as under :-

" ... But we are of the view that the principle underlying R.1 of O. XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawn of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once

again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art. 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case, the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject matter since the earlier writ petition had been withdrawn without permission to file a fresh petition."

14. In the case of SARGUJA TRANSPORT SERVICE vs. S.T.A. TRIBUNAL, GWALIOR (Supra), as earlier petition was withdrawn, on fresh petition, the High Court held that :

No second writ petition lies against the same order. The earlier petition was not withdrawn with permission to file a fresh petition.

15. This view has been upheld by the Apex Court. In view of this, in our opinion, the present petitions are not maintainable. It would be open for the petitioners to approach the appropriate forum, if law so permit.....

16. Mr. Desai, learned counsel has given the dates of the agreements and awards as under :-

Name of village    Date of    Date of    Page No.  
agreement    award

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Zankhar    31.03.95    26.04.95    352  
(one survey No.)    15.11.95    466  
Bharana    24.04.95    22.05.95    438  
Timbdi    24.05.95    08.09.95    472  
Sodha Targhari    26.05.95    28.07.95    478  
Kathi Devedia    12.05.95    28.07.95    489  
Kajurda    06.05.95    12.06.95    503

Mr. Desai also contended that notice under section 12(2) of the Act is not given. He submitted that on blank forms, signatures were obtained and details are filled in at a later stage in the blank forms. The agreements refer to lands in acquisition, and there is no reference to any construction on the land or standing trees etc. He submitted that the amount mentioned is inclusive of 12% additional amount, 30% solatium, and 35% incentive and the amount of interest is included therein. According to him this was the agreed amount of compensation for land only and exclusive of super structure. About the constructed properties or trees, there is no reference in the agreement, and yet, without issuing notice, the Land Acquisition Officer has determined compensation for construction and/or standing trees. Though there is no agreement about the figure so arrived at for construction or standing trees, one finds reference in the award. If the figure mentioned in the agreement is of the land, then price or the total amount mentioned in the agreement must be construed as compensation for lands and that price only should have been given, but instead, the price mentioned in the agreement is inclusive of construction or standing trees. According to him, reading the affidavit of the Land Acquisition Officer, it is very clear that he arrived at the figure of compensation of construction and trees at a later point of time, and, therefore, the same cannot form part of the agreement, and, therefore also, the agreement is not binding as blanks are filled in subsequently.

He further submitted that even for the sake of argument it is accepted that there was an agreement, even then, the amount in full is not parted with and at the time of taking possession, the agreement is not acted upon and therefore also, the agreement is not binding.

He further submitted that there is no provision in the agreement to keep any amount with the Land Acquisition Officer, and even for the sake of argument it is presumed that as per law the same is required to be kept with the Land Acquisition Officer, he could have kept the same, but in the facts and circumstances of the case, after deducting the amount which is payable towards the redemption of mortgage etc., there was no need to keep further amount with the Land Acquisition Officer, and he could not have kept the remaining amount with him except the amount which was

required to be paid to the Bank or Government. Therefore also, the respondents have not acted upon according to the agreement, and therefore, the petitioners are not supposed to act according to the agreement and the agreements are not binding to the petitioners, more so because the Collector is also a party to the agreement.

Thus, Mr. Desai submitted that as the figures have been inserted subsequently at the behest of the Company, there is a fraud and as the agreement has not been acted upon, the petitioners can ignore the agreement and the Collector is required to entertain the application for determination of compensation in accordance with law.

17. On behalf of the respondents, it is submitted that the expression "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to earth as per clause (a) of section 3 of the Act. Therefore, the word "land" is to be understood in the manner in which it is provided in the Act. When the agreement is entered into for a survey number of the land, that would include not only the land but also even things attached to the earth or permanently fastened to anything attached to the earth. Our attention was drawn to the agreement wherein it is specifically mentioned that the Land Acquisition Officer is entitled to decide if necessary in connection with the proceedings under the Land Acquisition Act, 1894 without making further inquiries according to the agreement. Thus, Condition No. 1 permits the Land Acquisition Officer to determine the amount of compensation with regard to the things permanently attached to the earth. It is also pointed out that as per clause 7 of the agreement, the Land Acquisition Officer is entitled to deduct the amount which is payable by the owner or the person interested to the Government or Bank mentioned in clause 7. On behalf of the State it was submitted that the amount of compensation was determined but what amount was recoverable from land holders was not ascertained at that time, and therefore, only 60% of the amount agreed towards the compensation was paid. On behalf of the respondent Company, it is pointed out by giving details that there are approximately eleven petitioners having only construction, eleven petitioners having only trees and twenty petitioners having both trees and construction out of seventy nine petitioners.

18. Mr. Desai, learned counsel, referring to paragraph 8 of the affidavit of the Land Acquisition Officer, at page 385, submitted that in the presence of the Land Acquisition Officer, land holders arrived at a settlement. He has also given the dates of settlement which we have indicated in the earlier part of this order. Mr. Desai submitted that as per the say of the Land Acquisition Officer, he was present throughout and the land holders were assisted by their respective leaders and Sarpanchas, who voluntarily agreed to settle the matter. He has further stated that the land holders had suggested that they may be paid Rs.17,500/- per vigha for non-irrigated lands and Rs.35,000/- per vigha for irrigated lands, in full and final settlement of all their claims, inclusive of solatium, incentive and additional amount, but exclusive of the value of trees, and cowsheds or other things attached to earth. Mr. Desai read out the following portion (as translated) "I say that the amount of compensation in the case of construction, trees, cow-shades etc. was to be separately arrived at". According to Mr. Desai, it was never determined and yet the same is reflected in the award. If the amount is not determined, then it is difficult to believe the version of the Land Acquisition Officer or the Company that when they entered into the agreement, the blanks were filled in indicating the amount of compensation including the compensation for trees and construction. The Land Acquisition Officer has also stated that 60% of the amount was paid by cheque to the land holders and 40% amount was to be retained in order to meet any encumbrances or any other liability in respect of the land. This being not a part of the agreement, Mr Desai contended that the same could not have been retained by the Land Acquisition Officer. It is required to be noted that when the payment was made to these petitioners, village leaders, others and Bank officers were present at the site and accounts of the land holders were opened and cheques were given to them in the presence of Land Acquisition Officer and other officers. Amount was paid to the land holders and they voluntarily accepted 60% of the amount and thereafter 'kabulat nama', i.e. agreement in form No. 15 and 'kabja pavti' were signed and possession came to be handed over. The Land Acquisition Officer has stated that he kept the amount because it was agreed between the parties that the amount payable to Government or Bank shall be deducted from the amount of compensation. There is a reference in the agreement for the payment to be made towards

liability. However, the extent of amount to be retained by the Land Acquisition Officer is not mentioned, but it appears that it was agreed between the parties and the same is fortified by their conduct as there is nothing on record that while accepting 60% of the compensation, any person has objected. It is specifically stated by the Land Acquisition Officer that the amount of compensation in respect of structure like house, water connection, pipe line, kundies, water tanks, cow sheds, trees, etc. were calculated and determined and included in the balance of 40% amount, which was kept with him. He has further stated that he had a team of Revenue officers, viz: Mamlatdars, Circle Officers, Talaties and other Clerical staff and they were also assisted by the Sarpanch and few villagers as well as Company's officials. It is further stated that in respect of each village, on different dates, agreements were executed. The talks for settlement were in progress. The village officers have records pertaining to the land with them and it is not a case of the land holders that the officers had no details with them to come to a conclusion as to what would be the amount of compensation to be paid with respect to the items other than the la.....

negotiations and talks were going on since months. We have indicated earlier the figures of villagers who were required to be paid for trees, construction etc. The village-wise details of the petitioners entitled for compensation other than the lands are as under :-

Name of village	Date of agree-ment	Only for trees & contruc-tion.	Only for trees & contruc-tion.	Both for trees & contruc-tion.
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Zankar	31.3.95	--	02	04
Bharana	24.4.95	04	05	02
Kajurda	06.5.95	--	--	--
Kathi Devada	12.5.95	02	--	02
Timbdi	24.5.95	02	01	--
Sodha Targhari	26.5.95	03	03	12

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Thus, considering the fact that since long the officers and the villagers were trying to arrive at a settlement, and, therefore, they had necessary details and figures with them and looking to the figures given



above and considering the staff, it would not be impossible for the Land Acquisition Officer to arrive at the amount of compensation required to be paid for things other than the land. Therefore, it is difficult to say that compensation is determined much after the agreement was executed. There is no dispute that only 60% of the compensation is paid at the time of executing of the agreements; that balance payable shall be equivalent to 40% only but from the copy of the award and calculations produced in tabular form, it clearly transpires that the balance amount payable is more than 40%. Mr. Desai could not satisfactorily explain and answer as to why this additional amount, in addition to 40% of the amount of land compensation, is shown as due and payable to land owners. In tabular form, amount of compensation for super structure, trees, cow-shed, etc. is separately shown and total of such amount is equivalent to the amount in excess of 40%. It is not possible to say that at the relevant time the Land Acquisition Officer could not have arrived at the figure which he arrived at. What the Land Acquisition Officer says is that separately he had to calculate and not that he has calculated after the agreements were executed. Thus, the only inference that can be drawn is that immediately at the time of execution of agreement and acceptance of 60% of the amount, the compensation for super structure, trees etc. was also determined with the consent of the land holders and included in the award.

19. On behalf of the petitioners, kabja pavti (Annexure 'A' pg. 44), kaboolatnama (pg.45) and agreement (pg. 46) have been produced with a view to impress upon the Court and to indicate that signatures were obtained, and, thereafter, blanks have been filled in. In paragraph 5, the petitioners have averred as under :-

"Petitioners say that on a mis-representation and by fraudulent means and also by suppressing material facts including the fact about the real market value of the land, the officers of the 4th respondent company got the signature from the petitioners. Petitioners say that even all the persons who were interested in the acquisition proceedings have not even signed the said agreement. Annexed hereto and marked as Annexure 'A' is a copy of one such form on which the signature and/or the thumb impression was taken and it was very clear that at the time when the signatures were obtained the amount of

compensation is not even mentioned in the Agreement and the agreement was got signed by misrepresentation and it amounts to fraud in the eye of law."

It is suggested that in this manner, signatures of all the land holders have been obtained on the blank forms. Looking to the three documents at Annexure 'A' it is clear that the names, signatures, survey number and the measurement of land are mentioned. Other details are not filled in. It is pointed out at page 283 in the affidavit in sur-rejoinder on behalf of the respondent No. 4 (beginning from pg. 276) that the said documents are not signed by the authorities. The said documents are relating to survey No. 326 of village Kajurda and it is not the case of the Company and even the petitioners that the land bearing survey No. 326 has also been acquired by consent as was done in other cases. It is also pointed out that Babulal Odhavji is petitioner No. 57, Vallabhadas Odhavji is petitioner No. 58, while Kesharji Odhavji is petitioner No. 67. Neither Gaurishankar nor Dayashankar are the petitioners in the present petition. These names are shown in the blank forms. So far as Babulal Odhavji is concerned, he has raised a dispute regarding survey No. 86. Vallabhji Odhavji has also raised a dispute regarding survey No. 86 while Kesharji Odhavji has raised a dispute regarding survey No. 14/1 of Sodha Targhari. They have not raised any dispute regarding survey No. 326 of village Kajurda, which is mentioned in the document at Annexure 'A' (see page 284). Survey No. 326 is not acquired by consent, but what is acquired is survey No. 86 and survey No. 14/1. It is pointed out that the documents produced at annexure 'A' are infact not signed by the Land Acquisition Officer or by the officers of the Company but the same are produced with a view to allege fraud and misrepresentation. According to the respondent No.4, the petitioners have committed an act of perjury and the petitioners have produced documents which never constituted part of the record of the Land Acquisition Proceedings. There is no agreement or consent between the Government, the Company and Vallabhadas, Gaurishankar, Dayashankar, Babulal, Kesharji in respect of survey No. 326 of village Kajurda.

20. Learned counsel for the petitioners submitted that blank forms are used wherein signature or thumb impression is taken. With regard to one of the claimants, on the basis of a xerox copy of a form, it

was submitted that an act of forgery is committed because the signature in the form is in Gujarati whereas the said claimant is an uneducated person and puts only thumb impression.

21. One Jagdish Abhesing Kethwa has filed an affidavit (at pg. 330) and has stated that Pravin Bhaishankar is holder of land both at village Jankhar and Timbdi and he is petitioner at Sl. No. 35 as well as at 43. In the purported documents relating to his land in village Jhankar, it is shown that he has signed the documents while with respect to his land at village Timbdi, it is shown that he has put his thumb impression. Learned Additional Advocate General has placed the original papers before the Court along with xerox copies of the same. In all the documents, six in number, with respect to Jhankar and Timbdi, we find that there are only thumb impressions. The documents are executed before the Collector and the copies relied are not of the said documents. Thus, we find no merits in the contention raised by the learned advocate for the petitioners. So far as village Jhankar is concerned, there are two witnesses to the documents, viz: (1). B.M. Jadeja and Khatubha Kumbhaji and the document is duly executed. B.M. Jadeja appears to be Sarpanch of Jhankar Gram Panchayat. So far as village Timbdi is concerned, the documents are executed in the presence of two witnesses and also in the presence of Talati-cum-Mantri and Deputy Collector.

22. In the circumstances, we find that the documents are executed before witnesses, Talati-cum-Mantri, Sarpanch and Deputy Collector etc. and we are not inclined to believe that there is any forgery and we find no merit in this contention.

23. According to the respondent, the documents produced at Annexure 'A' is with a view to create an impression in the mind of the Court that the Company got the signatures on blank forms and used the same. If the Company has taken signatures on blank forms/agreements and kept with it for using in acquisition proceedings, then how the same has remained in the custody of the petitioners and how they produced xerox copy of the same? Since we do not find any answer from the petitioners, the circumstance by itself negate the contention of Mr. Desai and fortify our aforesaid conclusions.

24. It is pointed out in the affidavit of the Joint Manager of the Company (pg. 203 onwards) that for

different villages, different meetings were held in the month of December 1994 on different dates in January 1995. It is also pointed out that 1842 H. 96 Are 83 sq. mtrs. of land is required to be acquired and a total of 696 land holders are involved in these lands, consisting of a total of 643 survey numbers. It is also pointed out that (pg. 211) out of 696 land holders, 667 have already agreed for the consent award and parted with the possession of the lands and have taken the amount of compensation and the Company is in exclusive possession of the lands and has engaged in geotechnical survey, seismic survey, survey for water potentiality by fencing the entire area. It is also pointed out that for the purpose of geotechnical survey, at pre-designated spots spreading across the entire land, the Company has dug bore holes of approximately 6" dia meter towards the depth of 3 to 10 meters. It is further pointed out that 96% of the land have already been acquired under consent and taken possession of by virtue of the consent award, and only 4% land remains with the land owners who have not yet entered into agreement for consent award. (pg. 211) It is pointed out that the estimated cost of lands privately held under acquisition under the Land Acquisition Act is approximately Rs. 32 Crores. Out of this, the Company has already paid approximately Rs.29.83 Crores to the aforesaid land holders for acquisition of their lands. The cost of the land held and transferred by Government to the Company is approximately Rs.5.2 Crores. Thus, the Company has actually paid Rs.35.03 Crores towards the price of the land (i.e. Rs.29.83 Crores to landholders + Rs.5.2 Crores to Government), and has taken possession. It is also pointed out in this affidavit (pg. 212) that the petitioners have voluntarily agreed to accept the amount of compensation as agreed by and between the parties, and having voluntarily handed over possession, have no right to invoke the extra ordinary jurisdiction of the High Court under Article 226 of the Constitution of India. It is also pointed out that this very petitioners earlier filed SCA No. 2937/95 but they withdrew the same as being satisfied with the amount of compensation, and thereafter, they have filed this petition after the judgment delivered by this Court in the case ZAVERCHAND POPATLAL SUMERIA VS. STATE reported in 36 (2) GLR 1773 (hereinafter referred to as the Reliance case). Mr. Diwan, learned counsel for the respondent Company submitted that the said decision is reversed by the Apex Court, which is reported in JT 1996 (5) SC 114. In the aforesaid Reliance case, this Court quashed the notification issued under sec. 4(1)

of the Act, on the ground that there was non-compliance of the provisions of the Rules and also violation of section 5A as the land owners were not afforded an opportunity of hearing. In that case, the machinery under the Land Acquisition Act was put into operation under Part VII of the Act for acquiring approximately an extent of 2500 Acres of lands situated in the villages of Moti Khavdi, Padana, Meghpur, Lalpur, Sikka and Gagva. Before the High Court, the lands admeasuring about 877 acres belonging to 89 individuals situated in Padana and Meghpur was the subject matter. When the matter was pending in the High Court and before the matter was concluded before the Hon'ble Supreme Court, Reliance was able to settle the matter with 70 individuals, leaving 19 individuals holding an extent of 241.34 Acre for settling the issue. Before the High Court, three contentions were raised; (1). that there was non-compliance of provisions of Rule 3 of the Land Acquisition (Companies) Rules, (2). that there was non-compliance of provisions of Rule 4 of the said Rules, and, (3). that hearing as required was not afforded and thereby there is violation of the provisions of section 5A of the Act. High Court accepted the contentions and quashed the notification under section 4(1), declaration u/s 6 and awards passed under the Land Acquisition Act. Before the Honourable Supreme Court, it was argued that the High Court on the facts of the case ought not to have entertained the writ petition under Article 226 of the Constitution of India, especially when the object of the petitioners before the High Court was for getting an unrealistic price for their lands. It was also submitted before the apex Court that the conduct of the petitioners in not challenging the legality and validity of notification under section 4(1), declaration under section 6 of the Act immediately after their publication and their having waited till the award was passed and later finding that the award was not to their satisfaction and filing reference under section 18 of the Act, disentitles them from moving the High Court under Article 226 of the Constitution. It is held by the Apex Court that such conduct on the part of the petitioners should have been taken due note of. It was also observed by the Apex Court that out of 89 persons who initially challenged the acquisition proceedings, only 19 are in the field and the rest have accepted the compensation, and that indicates that the sole object of the petitioners before the High Court was to get an unrealistic price. It was stated before the Apex Court that the Company was ready and willing to pay the same compensation as paid to the other

persons at the rate of Rs.43,750/-, for non-irrigated lands and Rs.87,500/-, for irrigated lands. On behalf of the land owners, it was submitted that the land owners are interested in present market value which is about Rs.7 lakhs per acre and if this amount is paid now, they will accept the same and give up their further claims. It was also submitted that as per decision of the Apex Court, compliance of requirement of Rules 3 and 4 of the Rules as well as personal hearing under section 5A are mandatory and non-compliance of the same as factually found by the High Court cannot be cured, and, therefore, the High Court was justified in entertaining the case under Article 226 of the Constitution and quashing the proceedings. The Apex Court held that on the facts which cannot be disputed, the High Court ought not to have exercised its discretionary jurisdiction and quashed the notification, declaration and award under the Act.

25. Mr. Diwan, learned counsel submitted that in the instant case, the land holders entered into an agreement and the amount has been accepted by the claimants in the presence of Bank officials and Revenue officers, and signatures are not denied by the petitioners. Not only that, though the petition was filed in the month of April 1995 (SCA No. 2798/95), before that some of the land holders accepted the amount and even after filing the said petition, some of the petitioners, except the landholders from Village Sodha Tharghari, accepted the amount as per the agreement, before withdrawal of the petition, petitioners arrived at a settlement, executed the documents, took the money and handedover the possession peacefully. Only in case of land holders of village Sodha Targhari, after withdrawal of the petition, they entered into an agreement. According to his submission, this fact itself indicate that the petition was filed with a view to get more amount of compensation, though the amount of compensation which was agreed between the parties had been paid. Therefore in his submission obviously the filing of a second petition is nothing but to bring undue pressure on the respondents to extract more price for the lands. Nothing prevented the petitioners from prosecuting the earlier petition, if they were justified in their claim but as they were satisfied during negotiations, they entered into the agreement. However, after the decision of the High Court in the Reliance case, the present petition is filed on 14.12.1995. Learned counsel Mr. Diwan submitted that once having entered

into an agreement and the petition having been withdrawn, the only inference that can be drawn is that the petition is filed only with a view to get more compensation than what they are entitled to. Mr. Diwan further submitted that no doubt, the procedure is not followed under the Act and Rules, but at the same time, the petitioners having abandoned their claim of challenging the non-observance of Part VII of the Act and the Rules, now they cannot be permitted to challenge the same, after getting substantial amount by way of compensation. Learned counsel further submitted that as the previous petition was withdrawn and the present petition is preferred after considerable time from the date of possession and the amount of compensation is paid to the claimants in the presence of Bank officials by cheques and in view of clause of (7), the Government is entitled to keep the amount, Court should not interfere.

26. Mr. Shelat, learned Additional Advocate General submitted that the petition is not maintainable and the lands vest in the Government after the award is made, and right, title and interest have been diverted on possession being handed over, and once the possession is handed over, notifications under sections 4 and 6 cannot be challenged. According to him, this is nothing but a change of mind in view of the Reliance's judgment. Had the petitioners not withdrawn the petition, then probably the petitioners could have got the benefit of the decision. Mr. Diwan emphasised that at the time of withdrawing the petition, no leave has been sought to file a fresh petition, and once the awards have been made, in view of the agreements, the petition should not be entertained. He pointed out that 466 landholders have received the payment as per the agreements and have not raised any dispute and on the ground of mis-representation or fraud, at the instance of these petitioners, this Court cannot entertain the petition under Article 226 of the Constitution. It is pointed out on behalf of the respondent Company that in all Rs.35.03 Crores are paid and the remaining amount which is required to be paid to the landholders is already deposited with the Government and the same is lying with the Government. Learned Counsel submitted that there is no merit in the contention that there is breach of agreement as the amount is not paid in full. Learned Additional Advocate General submitted that in view of the agreement, the amount was kept and it is the duty of the State to return the amount payable with interest. If the State has kept the amount according to the

agreement, it cannot be said that breach of agreement is committed.

27. It was submitted on behalf of the respondent that the object of section 11 (2) is to encourage negotiations between the parties interested in the land and the acquiring body as regards value of the land under acquisition and also to avoid delay in acquisition proceedings and unnecessary litigation. In our view, when parties have agreed to the amount of compensation, the Collector is not required to inquire further but has to make an award in terms of the agreement. With regard to the contention about the genuineness of the agreement, it is required to be stated that the first petition was filed in the month of April 1995 and was withdrawn on 16th June 1995 and in between the petitioners, except the land holders from Sodha Targhari, have entered into the agreement and handed over the possession. With regard to the land holders of Zankhar village, even before filing the petition, they entered into an agreement and possession was handed over. The petitioners and other claimants took the advantage of statutory provision for voluntary settlement regarding amount of compensation payable for their lands. Claimants and Collector entered into an agreement in that behalf and handed over possession after receiving 60% of the amount of compensation and later on Collector made award in terms of the agreement. Once advantage of statutory provision is taken, it is highly improper to say that the award be quashed. Before filing a petition, they were advised and thereafter, knowing full well about the consequences of the alleged act or omission on the part of the State Government, filed a petition through a lawyer. Some of the petitioners before filing the petition, some during the pendency of the petition, and some after withdrawal of the petition, received the amount of compensation. It is not their case that they have not consulted their counsel. Once the legal practitioner is there, it is to be presumed that the litigants are explained about the facts and law. They formed an Association for the purpose of questioning the proceedings, contributed for that purpose and elected or selected a person to act on their behalf. That is accepted position. Under the circumstances, it is difficult to believe that petitioners have been duped. The petitioners being fully aware, if there was mis-representation or fraud, would not have withdrawn the petition, and would have insisted to proceed with the matter, but the fact that they have withdrawn the matter itself indicates that it was a voluntary act,



and once consent award is passed on the basis of a duly executed agreement, learned counsel for the respondents have rightly contended that it is not open to the parties to make application under section 18 (1) of the Act for Reference to the Court. The party, who has executed an agreement in writing, accepted the compensation without protest and delivered the possession, cannot be permitted to rescind from the contract unilaterally. For canvassing this argument, learned counsel Mr. Diwan relied on the judgment of the Apex Court in the case of STATE OF GUJARAT VS. DAYA SHAMJIBHAI reported in (1995) 5 SCC 746. The Apex Court, in paragraph 7 of the judgment, held as under :-

"Sub-section (2) of section 11 gives right to the parties to enter into an agreement to receive award/compensation awarded under Section 11 in terms of the contract. Infact, it would be more expeditious to have the dispute sorted out so as to avoid delay in determination of proper compensation. The contract between the owners and the Collector in writing of the terms to be included in the award of the Collector is conclusive and binds the parties. They would not be entitled to seek any reference for enhancement of the compensation required to be adjudicated under Section 23 (1) of the Act." (emphasis supplied by me).

28. Learned Counsel for the Company submitted that as there is contract between the owners and the Collector in writing of the terms to be included in the award of the Collector, the same is conclusive and this binds the parties and therefore, it is not open for the petitioners to unilaterally rescind from the contract which they have executed.

29. Under section 11 of the Act, award under the hand of the Collector is to be made which may consist of the true area of the land, compensation which in his opinion should be allowed for the land, apportionment of the said compensation amongst all the persons known or believed to be interested in the land, or whom or of whose claims, he has information, whether or not they have respectively appeared before him. However, sub-clause (2) of section 11 of the Act begins with not obstante clause "Notwithstanding anything contained in sub section (1) .." Under this sub-clause, if the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of

the Collector in the form prescribed by the rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement. Looking to the terms of the agreement, the Collector and the claimants arrived at the figure of compensation to be paid in each case, which is detailed in the award. Therefore, now it is not open for the petitioners to act contrary to the agreement. In the earlier part of this judgment, we have indicated that before arriving at an agreed price, there were settlement talks and in the presence of independent officers, the settlement is arrived at and the petition has been withdrawn in case of all the petitioners. Therefore, it is very clear that in the presence of independent persons, the landholders have accepted the amount, and, therefore, it is difficult to accept the contention that there was mis-representation or fraud or that the blank forms have been filled in subsequently.

30. The Apex Court, in the case of ISHWARLAL PREMCHAND SHAH & ORS. VS. STATE OF GUJARAT & ORS reported in (1996) 4 SCC 174 considered the case where there were agreements between the owners and the Gujarat Industrial Development Corporation for whose benefits the lands were acquired. Even before the notification under section 4 was issued, the owners and the GIDC had entered into an agreement whereby the owners had agreed to part with the possession of their lands so as to enable the GIDC to establish an Udyog Nagar there upon. The Apex Court held that :-

"In a private sale between a willing vendor and a willing vendee, parties would arrive at consensus to pay and receive consolidated consideration which would form the market value of the land conveyed to the vendee. For public purpose, compulsory acquisition under the Act gives absolute title under Section 16 free from all encumbrances. Determination of the compensation would be done under Section 23 (1) on the basis of market value prevailing as on the date of the publication of the notification under section 4 (1). It would, therefore, be open to the parties to enter into a contract under Section 11 (2) without the necessity to determine compensation under Section 23 (1) and would receive market value at the rates incorporated in the contract signed under Section 11 (2) in which event the award need not be in Form 14."

31. It is known that the buyer would like to pay less price while the seller would try to get a higher price and when there is a balance, there is a settlement or the deal, and it would be done, obviously, keeping in mind other aspects also. Once they have entered into an agreement, the same binds the parties.

32. Mr. Diwan, learned counsel on behalf of the Company also invited our attention to paragraphs 24 (1), 24(2), 24 (3), 24 (4) and 25 of the affidavit in reply filed on behalf of the respondent No. 4 Company. The national importance of oil sector is described in these paragraphs. It is submitted that the project is in overall interest of the country and it is in the interest of the nation to give top priority to the oil sector. Suffice it to say that in any event, the procedure must be followed. In view of what we have stated above, it is clear that the award is the outcome of an agreement and if that be so, having once withdrawn the petition, the same cannot be attacked on the same grounds and rest of the grounds like executing of the documents, misrepresentation or fraud being question of fact, cannot be entertained by this Court under Article 226 of the Constitution of India.

33. Mr. Desai, learned counsel for the petitioners urged that the Collector being a party to the agreement as well as to the proceedings before this Court, it would be improper to ask the Collector to decide the issue. Suffice it to say that if fraud is alleged, it is for the petitioners to approach the appropriate forum, if law permits. It is required to be noted that if fraud is practised as a result of which they have signed the agreement, they can challenge the same but they have approached this Court after taking money and after waiting for quite some time as indicated above. Hence it is difficult to accept this contention and there is no merit in this submission.

34. Learned counsel for the respondent Company pointed out that about 1000 persons are working on the site and several contracts have been awarded in respect of a large number of work and the project is to be completed within 39 months. Details are given in the affidavit. Global procurement has also begun for the project. In this context, it is pointed out that several crores of rupees have already been spent on the project. It is submitted that the landholders have handed over possession of the land to the Government, who in turn has handed over the possession to the Company and the Company is thus in possession of the

lands and has started operation and several contracts have been given. It is, therefore, submitted that at this belated juncture, this Court should not entertain this petition.

35. Mr. Desai submitted that when the petition was filed, there was no award and there were no agreements. Only notifications under section 4 and 6 were challenged. However, we have indicated above that there were settlements even in March, April and May 1995 and thereafter the petition is withdrawn and even after withdrawal of the petition, some of the petitioners, those belonging to Sodha Targhari, have entered into agreements. Mr. Desai further submitted that the petitioners have not withdrawn the petition unconditionally, but it was withdrawn in view of the settlement and as there is breach of the settlement these petitions are filed. According to him, the petitioners are entitled to revive the petition or they can even file a fresh petition. Suffice it to say that a second petition is not maintainable for the reasons stated earlier. With respect to the awards, which were not in existence at the relevant time of filing of the earlier petition and before withdrawal of the same and are made subsequently, if the same were not subject to challenge, merely because earlier petition was filed and withdrawn would not come in the way of the petitioners as they are challenging the awards and not the notifications. The contention is that there is fraud or mis-representation, for which, in the facts of this case, this Court would not like to interfere and exercise its jurisdiction, and we find no merits in the contentions raised by Mr. Desai. Mr. Desai contended that in the present petition, they are challenging the award and as no forum is provided, the petition under Article 226 is maintainable and this is a proper forum. As we have pointed out earlier, in view of the Apex Court's judgment, it is not open to rescind the agreement unilaterally as the agreement is conclusive and binding to the parties. We are much more concerned in the instant case with the conduct of the land holders as after entering into an agreement and after handing over the possession of the lands by accepting part payment, they have filed these petitions, and that too after waiting for sufficiently long time. If the transaction was fraudulent, they would have immediately protested and would not have withdrawn the petition. We find no merit in this contention. Apart from merits, the conduct of the land holders also estops them from agitating the issue.

36. In view of the facts and circumstances of the case, it would not be proper for this Court to entertain these petitions and to exercise our discretionary jurisdiction to quash the notifications, declarations and the awards under the Act.

37. Mr. Diwan, learned counsel submitted that once the possession is handed over to the Government and in turn if the Government has handed over to the Company and the awards are made thereafter, it would not be appropriate for the Court to interfere. He pointed out from the possession receipt, which clearly indicates that the land holders have handed over the possession of the land to the Government and in turn the possession is handed over to the Company by the Government. It is also pointed out by the respondent Company from the affidavit of the Land Acquisition Officer (pg. 386) that every land holder has executed a kaboolatnama and kabja pavti and handed over the possession of the lands which were taken over and in turn given to the respondent Company. Thus, the possession is already taken over by the Government, and thereafter it was handed over to the Company.

38. Mr. Desai submitted that the possession is handed over to the Company and not to the Government. For this purpose, he has drawn our attention to paragraph 12 of the affidavit on behalf of the respondent No. 4 (at pg. 203, relevant at pg. 209) wherein it is stated to the effect that possession was handed over to the officers of the Company and the documents were executed. The Company is in actual physical possession since then. Suffice it to say that it is not the case of the petitioners that they handed over the possession to the Company. When there is an agreement in writing to the effect that possession is handed over to the Government, it is not possible to accept the oral contention that the Company has taken over the possession directly. There is documentary evidence on record to show that the possession is handed over to the Government. In view of this, it is not possible to accept the contention of Mr. Desai that the possession was handed over directly to the Company. Even assuming this to be true, the possession shall be deemed to have been parted under a valid and legal agreement binding to parties and therefore, being a matter of fact, cannot be agitated in this proceedings.

39. Mr. Diwan, learned counsel drew our attention to paragraph 4 of the judgment of the Apex Court in the

case of G.M., TELE COMMUNICATION & ANR ETC. VS. DR. M.M. PRADHAN & ORS. ETC. reported in JT 1995 (8) SC 193, which reads as under :-

"It is already seen that the possession having already been taken on April 12, 1976 and vested in the Government free from all encumbrances and many other having accepted the award and some had received the compensation under protest, the High Court was wholly unjustified in interfering with the acquisition."

It was submitted that in the instant case, possession was taken by the Government and award has been accepted by a large number of persons. In this view of the matter also, this petition cannot be entertained.

40. Mr. Diwan, learned counsel further submitted that some of the petitioners accepted the amount even after withdrawal of earlier petition and thereafter they challenged the notification and declaration and some of them accepted the amount during the pendency of the petition, and in view of the written agreement, this Court should not interfere. In the case of STATE OF HARYANA & ORS. VS. DEWAN SINGH & ORS. reported in JT 1995 (8) SC 348 it was contended that valuable right is taken away by exercise the power under section 17 (4) of the Act, dispensing with the inquiry and merely because there is delay, the right to challenge the same cannot be taken away. In this fact, the Apex Court held that after the award was made, the Court would not be justified in quashing the notification under section 4 (1) of the Act and the declaration under section 6 for dispensing with the inquiry under section 5(A). In the instant case, there is no question of dispensing with the inquiry under section 5 (A) of the Act but learned Counsel has pointed out that after the award is made, there is no question of quashing the notification under section 4(1) and the declaration under section 6 of the Act. Thus, in short, it was pointed out to us that in the instant case not only that the notification under section 4(1) and the declaration under section 6 are made, but also the possession is taken, and, therefore, this Court should not interfere. In view of the decisions of the Apex Court, and in the facts and circumstances of the case it will not be proper for this Court to interfere in the instant case.

41. Section 16 of the Act provides that when the Collector has made an award under section 11, he may

take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. While so, under section 17, the powers are exercised even before the award, on the expiration of fifteen days from the publication of the notice mentioned in section 9 sub section (1). However, in view of the provisions contained in section 11 (2) to 11(4), if both the parties interested in the land agree to the amount of compensation, the Collector may pass an award in terms of the agreement without further inquiry. If there is an agreement between the parties, then the Collector is merely required to put his seal to that agreement. It is just like a consent decree to which the seal of the Collector is superadded. The Land Acquisition Officer as a deciding authority merely puts his seal over the agreement. Such an award is at the instance of the interested parties. Therefore, in a matter like this, where possession is handed over earlier to the Government even before the award, the land vest in the Government from the moment when possession is handed over to the Government. On the date when the parties agreed to the terms in the instant case, even possession is handed over and merely there was postponement of declaration in the form of an award and payment of remaining amount, it cannot be said that award is not according to law and, therefore, from the day the possession of the land is handed over to the Government, it vests absolutely in the Government free from all encumbrances. If that be so, the acquisition proceedings cannot be challenged subsequently at a later stage.

42. Mr. Diwan, learned counsel drew our attention to the case of SPECIAL LAND ACQUISITION OFFICER VS. SIDAPPA OMANNA TUMARI reported in 1995 SUPP. (2) SCC 168. In that case, a large block of 300 Acres of land was proposed to be acquired. Out of a total 300 Acres of the acquired lands, owners of about 240 Acres entered into an agreement with the State Government in the matter of compensation payable for their lands at the rate of Rs.4000/per Acre as provided for under Section 29(2) of the Karnataka Industrial Areas Development Act, 1966, and received the same under the award made by the Land Acquisition Officer in that behalf. Since owners of the remaining 60 Acres of land did not accept the award, made applications to the Land Acquisition Officer under section 18 of the Act and sought for reference to the Civil Court for determination of compensation payable for their lands. The Civil Court held an inquiry and determined the market value of the land at Rs.60,000/- per acre. On

appeal, the High Court reduced the market value to Rs.52,000/- per acre. Therefore, appeals were before the Apex Court by the Board and the Land Acquisition Officer seeking the setting aside of the judgments and decrees of the Civil Court as well as the High Court. The Apex Court, in paragraph 11 of the judgment, has held as under :-

"11. As held by this Court in Krishna Yachandra Bachadurvaru v. Special Land Acquisition Officer, City Improvement Trust Board [(1979) 4 SCC 356] the estimation of market value of the acquired land depends on evaluation of many imponderables. Play of conjecture and guess in the estimation of market value of the acquired land cannot be avoided even though such conjecture or guess has to be founded on the facts and circumstances of each case. But, the market value of the acquired land must be a near estimate of the price which the claimant by voluntarily selling the awarded land would have got from a willing purchaser. What could be regarded as the near estimate of the acquired land has to be ascertained, be it the Collector or be it the Court on the basis of authenticated transactions of sales or agreements to sell relating to the same land or a portion of it wherever possible because such transactions of sale or agreements to sell are always regarded as the best evidence available for the purpose. When lands are notified for acquisition, all the persons interested in any of those lands who are entitled to obtain compensation therefor, taking advantage of the statutory provisions for voluntary settlement of the amount of compensation payable for their lands enter into an agreement with the Collector in that behalf and receive such amount from the Collector as per his award made accordingly under the provisions of the LA Act. Ordinarily, no room for doubting the authenticity or genuineness of the award for compensation made by the Collector on the basis of such agreement can arise. The evidentiary value of such award determining the amount of compensation made under Section 11 (2) of the LA Act by the Collector ought to necessarily increase depending on the portion which the area of the lands covered by the award may bear to the total area of the land covered by the notification or acquisition.



43. The Civil Court ignored the factum of settlement reached by owners of about 240 Acres of land which were similar to the 60 acres of land and formed four-fifths of the 300 acres of the acquired lands. When 240 acre of lands acquired for which Rs.4000/- per acre were received as compensation by an agreement and 60 acre of lands acquired for which the Court had to determine compensation were similar, no merit could be found in the argument that their lands being closer to the highway should be granted higher compensation. The Apex Court also observed that the High Court has also ignored the fact that for similarly acquired lands, and owners of more than four-fifths of the land have accepted the compensation determined by the Land Acquisition Officer in his award. Mr. Diwan, learned counsel submitted that in the instant case the same price is offered to the petitioners which is offered to other landholders who have accepted the award and therefore, there is no earthly reason to claim more compensation than what has been paid to others. In the instant case, out of 696 land owners, 79 petitioners have not accepted the award under an agreement duly executed. Moreover, 96% of the land is already acquired under consent award and possession is taken and only 4% of the land remains with the land holders who have not yet entered into an agreement for consent award. Thus, out of 696 land holders, 588 land holders have accepted the price and only 79 land holders, though have executed the agreement, accepted the amount (60%) and handed over possession, have filed the petition. In view of the principles laid down by the apex Court in the case of SIDAPPA OMANNA's case (supra) the compensation agreed upon by the majority of the land holders and decided by the Land Acquisition Officer in the award should be considered as the market price, and hence there is no question of entertaining these petitions.

44. Mr. Desai contended that the amount as agreed should have been paid. It appears that the Company has deposited the amount with the Government and it was for the Government to make payment to the landholders as per the consent award. As indicated earlier, the Collector retained the amount with him with a view to see that if any amount is required to be paid to the Government or to any Bank, the same can be paid straight away. Learned Additional Advocate General also stated that the amount was kept with the aforesaid purpose only. In the circumstances, if the Government has kept the amount with the aforesaid purpose, the action of the Government cannot be said to be

unauthorised, but at the same time, if the amount so retained by the Government is in excess of the amount due to the Government or any Bank, the same must be paid to the landholders, and that too, with interest. Learned Additional Advocate General fairly stated that the Government has to make the payment with interest. Therefore, this grievance also is not required to be entertained any further. If the amount was not deposited by the Company with the Government as per the consent award, then the question would have been different but it is stated on behalf of the Government that the Company did deposit the amount with the Government but as the Government retained it for the purpose aforesaid, no wrong is committed. Mr Shelat further submitted that in case of all claimants, other than the petitioners, amount was retained and has been paid after ascertaining their liability and payment to bank or the Government, as case may be. Likewise, the petitioners are entitled to get the same but instead they have filed a petition and have never come to collect the same. However, the same is to be paid to the landholders/claimants with interest on the amount retained in excess of dues to the Government or Banks.

45. Learned advocate Mr. Munshi appearing for the petitioners in SCA No. 3719 of 1996 has adopted the submissions made by Mr. Desai. He has further submitted that the thumb mark appearing on Annexures 'F', 'H' and 'I' at pages 83, 98 and 101 of S.C.A. No. 3719 of 96 purported to be of the petitioners are not of the petitioners but are of some other persons. It is required to be noted that receipt of the amount is not denied by him. The petitioners have received the amount of Rs.8,48,580/on 26th May 1995 by a cheque. Earlier a petition was filed being Spl. C.A. No. 2052 of 96 on 15th March 1996 but that has been dismissed for non removal of office objections on 24.6.96. Suffice it to say that once the petition is dismissed, this petition is not maintainable. On merits, for the reasons recorded earlier, this petition is also required to be rejected and is rejected.

46. In the result, all these petitions are rejected. The amount retained by the Government shall be paid in accordance with law to the land holders/claimants with interest as provided in the Act. Notice in all the petitions is discharged. No order as to costs.  
csm./